United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

Pappas' Claim of Kinship.

75-4219

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

CHARALAMBOS PAPPAS
AND
LUELLA MAY PAPPAS,

Petitioners,

Docket No. 75-4219

-against-

IMMIGRATION AND NATURALIZATION
SERVICE,

Respondent.

B
P/S

PETITION TO REVIEW
A FINAL ORDER OF
THE BOARD OF IMMIGRATION APPEALS

PETITIONERS' BRIEF AND APPENDIX

STEVEN S. MUKAMAL, Esq.
Counsel for Petitioners
BARST & MUKAMAL
127 John Street
New York, New York 10038
212 952-0700

PAGINATION AS IN ORIGINAL COPY

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hypothetical denial of adjustment of status under 8 U.S.C. 1255 was

TABLE OF AUTHORITIES

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. THAT RESPONDENT'S DENIAL OF PETITIONER'S APPLICATION FOR A WAIVER OF INADMISSIBILITY UNDER 8 U.S.C. 1182(h) CONSTITUTES AN ABUSE OF DISCRETION.

2. THAT PETITIONER, WHOSE WAIVER APPLICATION SHOULD HAVE BEEN GRANTED, IS OTHERWISE ELIGIBLE FOR ADJUSTMENT OF STATUS UNDER 8 U.S.C. 1255.

STATEMENT OF THE CASE

This petition has been brought to review a determination of the Immigration and Naturalization Service. Jurisdiction of this Court is grounded upon 8 U.S.C. 1105(a).

On May 30, 1974 an Immigration Judge, following a denial of petitioners' application for a waiver of inadmissibility made pursuant to 8 U.S.C. 1182(h), entered an order of deportation with a provision for voluntary departure against petitioners in this case.

The order of the Immigration Judge was affirmed by decision of the Board of Immigration Appeals dated and entered July 7,1975.

The instant petition for review was filed with this Court on October 6, 1975.

STATEMENT OF FACTS

On October 29, 1958, in Vancouver, B.C., Charalambos Pappas was arrested and charged with the commission of an indecent act under Section 158 of the Canadian Criminal Code. Mr. Pappas was fined $50.00 (App. 28).[1]

In June 1960, Mr. Pappas was married to petitioner, Luella May Pappas (nee Johnston) in Vancouver, B. C. From that time until March 26, 1971, a period in excess of ten years, Mr. Pappas had no problems with any law endorsement agency anywhere in the world. (App. 7, 28, 29)

During the years 1955 through 1970, Mr. Pappas came under deportation proceedings three times for remaining in the United States longer than originally authorized at the time of entry. (App. 30, 31) In each case, Mr. Pappas was granted the privilege of voluntary departure of which he availed himself (App. 31). Thus, Mr. Pappas was permitted to re-enter the United States at subsequent times without the necessity of obtaining a special waiver to do so. (App. 8)

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[1] The specific charge of the crime of which Mr. Pappas was convicted as it appears on the report of the Canadian conviction was,

> "that at the City of Vancouver between the 8th day of August, and the 15th day of August, A.D.,1958, the accused unlawfully did wilfully do an indecent act in a rooming house situate at 345 West 13th Avenue with intent thereby to insult or offend a person."

Mr. Pappas re-entered the United States at Blaine, Washington on May 29, 1971 with the stated purpose of visiting his mother who had been seriously injured in an automobile accident.(App.23,24)

Mr. and Mrs. Pappas came under deportation proceedings in May 1972 and at a hearing begun on May 10, 1972, Mr. Pappas made application for a waiver under 8 U.S.C. 1182(h) and adjustment of status to that of a lawful permanent resident pursuant to 8 U.S.C. 1255.

Following a series of hearings which continued until October 1973, the Immigration Judge rendered separate opinions in the matter of Mr. and Mrs. Pappas' applications. Mrs. Pappas' case was consolidated with that of her husband as she sought to adjust her status on the basis of his application. Mrs. Pappas conceded deportability and applied for the privilege of voluntary departure.

In his opinion dated May 30, 1974, the Immigration Judge denied Mr. Pappas' application for a waiver under 8 U.S.C. 1182(h). Though sworn testimony was given that Mr. Pappas contributed to the support of his citizen mother (App. 24), as well as his being the father of a United States citizen child which made him eligible for such a waiver under the statute, the Immigration Judge denied Mr. Pappas' application stating simply:

> "I find that he has failed to establish the degree of hardship required for waiver of inadmissibility at this time. At most the hardship visited on his son

who is a citizen of the United States would be a brief stay outside the United States pending the processing of visa applications by the alien member of his family" (App. 10).

The Immigration Judge went on to deny Mr. Pappas' application for adjustment of status as a matter of discretion (App. 11,12), though not required to do so by statute in a case such as this where a waiver of inadmissibility would preclude eligibility for such relief by the terms of 8 U.S.C. 1255 (App. 12).[2]

There was no question raised at the hearing below concerning the possiblity of Mr. Pappas being a threat to the safety or national security of the United States, and in a decision dated July 7, 1975 the Board of Immigration Appeals affirmed the decision of the Immigration Judge and dismissed petitioner's appeal (App. 1-3).

It is from this order that the instant petition for review has been brought.

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[2] It is to be noted that petitioner was again granted voluntary departure in lieu of deportation (App. 12).

SUMMARY OF ARGUMENT

Petitioner contends that respondent's denial of his application for a waiver pursuant to 8 U.S.C. 1182(h) constituted an abuse of discretion in view of the extreme hardship that would be worked on petitioner, Charalambos Pappas' son and mother who are both United States citizens, as well as Mr. Pappas' two citizen brothers.

The break-up of the Pappas family unit and/or the forced exile of the Pappas' United States citizen son, as well as the Pappas' length of residence and substantial ties in the United States, and the fact that the crimes committed by petitioner were minor infractions of law which occurred on only two occasions over a thirteen year period, mandate a reversal of respondent's denial of petitioner's waiver application.

Further, petitioner contends that he is eligible for adjustment of status pursuant to 8 U.S.C. 1255 under the criteria set forth by the Board of Immigration Appeals.

The substantial equities in the Pappas' case greatly outweigh any adverse factors which may be present.

POINT I

RESPONDENT'S DENIAL OF PETITIONER'S WAIVER APPLICATION CONSTITUTES AN ABUSE OF DISCRETION.

CHARALAMBOS PAPPAS applied for a waiver of excludability under 8 U.S.C. 1182(h) which provides that,

> "Any alien who is excludable from the United States under paragraphs (9), (10), or (12) of subsection (a) of this section, who (A) is the spouse or child, including a minor unmarried adopted child, of a United States citizen, or of an alien lawfully admitted for permanent residence, or (B) has a son or daughter who is a United States citizen or an alien lawfully admitted for permanent residence, shall, if otherwise admissible, be issued a visa and admitted to the United States for permanent residence (1) if it shall be established to the satisfaction of the Attorney General that (A) the alien's exclusion would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, or son or daughter of such alien, and (B) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States; and (2) if the Attorney General, in his discretion, and pursuant to such terms, conditions, and procedures as he may by regulations prescribe, has consented to the alien's applying or re-applying for a visa and for admission to the United States." [3]

[3] Congress was fully aware of the potentially devastating effect that the operation of 8 U.S.C. 1182(a)(9) might have on the alien and his family. Therefore, 8 U.S.C. 1182(h) was enacted to alleviate the hardship which would occur should the alien be forced to leave the country and be separated from his citizen spouse, parents or children.

Mr. Pappas, being both the son of a United States citizen and the father of a United States citizen child, made such application because he had been twice convicted of crimes which have been construed to involve moral turpitude and was thus deemed excludable under 8 U.S.C. 1182(a)(9). (p.3 infra)

There being no question that petitioner fulfilled the first two criteria for eligibility for a waiver as he was possessed of the requisite family relationships, (citizen mother and citizen child) the question arose as to whether "the alien's exclusion would result in extreme hardship to the United States citizen... parent or son...of such alien." 8 U.S.C. 1182(h)(1)(A)

The facts presented below indicated that Mr. Pappas' United States citizen son would be uprooted from school in the United States and forced to live in a foreign country. Further, Mr. Pappas was contributing, together with his two United States citizen brothers, to the support of his aged, citizen mother.

Mr. Pappas' close relationship with his mother is evidenced by his re-entry into the United States in 1971 for the purpose of aiding her, following her injury in an automobile accident. (App. 22-24) Mr. Pappas also testified at the hearing below that he visited his mother frequently with his wife and children and that his mother was a regular guest in his home.

'Extreme hardship' is a difficult concept to define with accuracy as the facts and circumstances peculiar to each case are controlling.

There are, however, cases decided by the Board of Immigration Appeals which indicate the types of circumstances evidencing 'extreme hardship'.

In Matter of B, 11 I&N 560 (BIA 1966), the Board found a 41 year old male, who had been married three times and twice convicted of passing bad checks, eligible for relief under 8 U.S.C. 1182(h) for the reason that he could not support his United States citizen wife while abroad.

It was also noted that the respondent had been granted voluntary departure in 1963 and had left the country after 17 years of residence.

The length of residence of respondent in Matter of B, supra, as well as his family ties were weighed against the hardship to be visited on his present wife and a waiver for two serious crimes was granted.

In Matter of W, 9 I&N 1 (BIA 1960), the Board, in denying respondent's application for a waiver, indicated that in assessing the degree of hardship it would also be proper to note that appellant had no significant ties whether family, business, social or sentimental to the United States.

Mr. Pappas has shown substantial ties to the United States not only in regard to his United States citizen son, but also, he has two United States citizen brothers, his mother is here and he has established himself as a productive worker and conscientious

On May 29, 1971 and has remained. He was placed under these proceedings

provider for his family. (App. 17-21)

The hardship which would be visited upon Mr. Pappas' son and his mother, who had previously filed a fourth preference visa petition on his behalf, must be weighed in the context of Mr. Pappas' criminal record.

Mr. Pappas' criminal record consists of two isolated acts which occurred thirteen years apart. Both acts were misdemeanors and cannot be construed in any way as crimes of violence against persons or property.

In 1972, the Board of Immigration Appeals, in a case where a woman admitted to having been a prostitute for a continuous period of four years, granted a waiver of excludability. Such a grant would tend to support the proposition that even where a continued course of immoral conduct was demonstrated, a waiver might still be granted. Matter of H, Interim Decision, No 2161 (BIA 1972).[4]

Here, Mr. Pappas' misdemeanors, committed on only two occasions over an extended period of time, can at worst be construed as being only minor infractions of law. As such, the

[4] Further, in Matter of H, supra, the Board specifically considered the forced exile of a United States citizen as a strong swaying factor in the adjudication of a waiver application under 8 U.S.C. 1182(h).

filed by his mother in his behalf. That petition was filed on [illegible]

Immigration Judge erred in weighing them so heavily against Mr. Pappas' claim of hardship.

It is petitioners' contention that their family situation was literally ignored by the Immigration Judge in reaching his conclusion on the waiver application in question. (App. 9-11) There is no evidence here which would support a finding that Mr. Pappas' criminal history outweighs the hardship subsequently sought to be imposed upon his citizen child and mother, to say nothing of the rest of his immediate family. Cf. United States ex. rel. Martin-Gardoqui v. Esperdy, 367 F.2d 861 (2d Cir. 1966).

Finally, it is obvious that Mr. Pappas presents no threat to the "...national welfare, safety or security of the United States," and thus fulfills the second condition precedent to the grant of a waiver subsequent to a determination of the requisite family relationship. This issue was not raised below by respondent and the Immigration Judge's grant of voluntary departure combined with Mr. Pappas' prior grants of voluntary departure mitigates strongly against an adverse conclusion on this issue.

This should not and would not have resulted into any extraordinary

POINT II

PETITIONER MERITS ADJUSTMENT OF STATUS UNDER 8 U.S.C. 1255

Assuming, as argued in Point I infra, that petitioner comes within the waiver provisions of 8 U.S.C. 1182(h), it is respectfully submitted that petitioner merits discretionary relief under 8 U.S.C. 1255.

Matter of Arai, 13 I&N 494 (BIA 1970), indicated the factors to be considered in granting relief under 8 U.S.C. 1255. These include such favorable factors as family ties, hardship and length of residence in the United States.

In Matter of Arai, supra, the Board reversed the holding of a Special Inquiry Officer finding respondent ineligible for discretionary relief. In so holding, the Board indicated that adverse factors must be defined in the context of respondent's application as a whole. Adverse factors were painted as a conditional bar to discretionary relief as the Board said that it, "may be necessary for the appellant to offset these by a showing of unusual or even outstanding equities." supra at 496.

The outstanding equities in the instant case are manifest. Clearly, Mr. Pappas has substantial ties in the United States in

the United States in the form of his citizen child. Further, his mother and two brothers, all citizens, make up a close family unit, the break up of which would result should Mr. Pappas be deported.

Also, Mr. Pappas has spent a significant period of time in the United States. Admittedly, some of this time was spent here without proper authorization, but this must be weighed with the beneficial and humanitarian purpose of 8 U.S.C. 1255 in mind.

The Immigration Judge in his decision focused upon Mr. Pappas' history of immigration law violations and speculated as to the possible alternatives available to Mr. Pappas for obtaining a visa abroad. This indicates a very strange process which on the one hand says no relief is available in the United States and on the other hand indicates that quick relief would be available by Mr. Pappas' leaving the country. Such a line of reasoning runs contrary to the spirit and beneficent purpose of 8 U.S.C. 1255 which seeks to save aliens great expense and avoid disruption in their lives by permitting them to become permanent residents without going outside the United States to obtain an immigrant visa.

Finally, petitioners conclude that not only was the grant of a waiver mandated by this case, but that it was an abuse of discretion to deny such a waiver and the subsequent, albeit,

hypothetical denial of adjustment of status under 8 U.S.C. 1255 was unwarranted and arbitary.

CONCLUSION

WHEREFORE, petitioners pray that the decision of the Board of Immigration Appeals be reversed and the waiver application under 8 U.S.C. 1182(h) be granted.

FURTHER, petitioners pray that their status be adjusted to that of lawful permanent residents of the United States.

APPENDIX

United States Department of Justice
Board of Immigration Appeals
Washington, D.C. 20530

File: A10 116 749 - New York

JUL 7 - 1975

In re: CHARALAMBOS PAPPAS

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Barst & Mukamal
Steven Singer, Esq.
127 John Street
New York, N. Y. 10038

ON BEHALF OF I&N SERVICE: Irving A. Appleman, Esq.
Appellate Trial Attorney

ORAL ARGUMENT: October 2, 1974

CHARGE:

ORDER: Section 241(a)(9), I&N Act (8 USC 1251 (a)(9)) - Nonimmigrant visitor failed to comply

APPLICATION: Adjustment of status under section 245 (8 USC 1182(h)) - with a waiver of inadmissibility under section 212(a)(9) (8 USC 1182(a)(9)) pursuant to section 212(h), or voluntary departure

This is an appeal from a decision of an immigration judge, dated May 30, 1974, finding the respondent deportable under section 241(a)(9) of the Immigration and Nationality Act, ordering his deportation to Canada and denying his application for adjustment of status. The appeal will be dismissed.

The respondent is a 41-year-old married male alien who is a native of Egypt and citizen of Canada. He has a United States citizen child, born December 30, 1965. He last entered the United States on May 29, 1971 as a visitor for pleasure. The respondent has been employed in the United States without permission. He has conceded deportability as an alien who has failed to maintain his nonimmigrant status.

The respondent has submitted an application for adjustment of status pursuant to section 245 of the Act. In order to be eligible for this relief, he must show that he is admissible to the United States. The respondent is the beneficiary of an approved fourth preference immigrant visa petition as the married son of a United States citizen.

The respondent has previously been convicted of two crimes, which counsel at oral argument has conceded involve moral turpitude. He is therefore inadmissible under section 212(a)(9) of the Act. Accordingly, the respondent has submitted an application for waiver of this ground of inadmissibility pursuant to section 212(h) of the Act. See 8 C.F.R. 245.1(f).

As the parent of a United States citizen and the son of a United States citizen, the respondent has the requisite familial relationship to seek a waiver under section 212(h). However, in order to obtain the waiver, he must show that his exclusion from the United States would result in extreme hardship to his United States citizen child or to his United States citizen parent. At the hearing before the immigration judge, the respondent failed to establish any basis for his claim that a denial of his application would result in extreme hardship either to his child or to his mother. He had previously stated during interviews conducted by Service officials that, if he were to be deported, his United States citizen child would be unable to obtain an education equivalent to that available in the United States. That, however, was mere conjecture on his part, and was not supported by any evidence. He additionally asserted that

separation from his mother would cause her emotional distress, and that his own economic opportunities would be poor in Canada. Mere separation from a family member without more is not sufficient to establish extreme hardship. Matter of W-, 9 I&N Dec. 1 (BIA 1960). Moreover, hardship on the alien himself is not a factor in determining his eligibility for the waiver. Matter of Shaugnessy, 12 I&N Dec. 810 (BIA 1968). We conclude that the respondent has failed to establish the requisite extreme hardship. Since the respondent is not entitled to the waiver of inadmissibility provided for in section 212(h), he therefore is not eligible for adjustment of status under section 245 of the Act.

Moreover, the immigration judge determined that even if the respondent were eligible for adjustment of status, it should be denied in the exercise of discretion. The immigration judge noted that the respondent had previously been admitted to the United States on at least three occasions: in 1955, 1956 and 1971. On each occasion the respondent violated his nonimmigrant status and on each occasion was found deportable, but was granted the privilege of voluntary departure, which he apparently exercised. Additionally, it appears that the respondent has worked in the United States for significant periods of time, on other occasions. However, on his application for adjustment of status he indicated that at those times he was residing in Canada. We agree with the immigration judge that the respondent's application for adjustment of status should be denied in the exercise of discretion, even if he were eligible for the relief sought.

The decision of the immigration judge was correct. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

A10 116 749

Further Order: Pursuant to the immigration judge's order, the respondent is permitted to depart from the United States voluntarily within 46 days from the date of this order or any extension beyond that time as may be granted by the District Director; and in the event of failure so to depart, the respondent shall be deported as provided in the immigration judge's order.

Chairman

Board Member, Irving A. Appleman abstained from consideration of this case.

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE
20 West Broadway
New York, N.Y. 10007

Date: June 3, 1974

Steven Singer, Esq.
Darst & Mukamal
127 John Street
New York, N.Y. 10038

File A - 10 116 749

and

John P. Ruggiero, Esq.
Trial Attorney
New York, N.Y. 10007

Dear Sir:

MATTER OF
CHARILAMBOS PAPPAS

[XX] Attached is a copy of the written decision of the Immigration Judge. This decision is final unless an appeal is taken to the Board of Immigration Appeals by returning to this office on or before June 17, 1974 the enclosed copies of Form I-290A, Notice of Appeal, properly executed, together with a fee of twenty-five dollars ($25.00). If you wish to submit a supporting brief it should also be returned on or before that date.

[ ] Attached is an information copy of the oral decision of the Immigration Judge made on _____

[ ] Attached, as requested, is a transcript of the testimony of record, pages ___ to ___ _____ which is being loaned to you on condition that no copy thereof will be made, that it will be retained in your possession and control, and that it will be surrendered upon final disposition of the case or upon demand by the Service.

[ ] You are advised that on _____ the Immigration Judge entered an order, which is final, granting the application for adjustment of status to that of a permanent resident under Section _____ of the Immigration and Nationality Act. A Form I-151, Alien Registration Receipt Card will be delivered in due course.

[ ] You are granted additional time until _____ to submit a brief to this office in support of your appeal.

Very truly yours,

Loretta B. Trimble

Special Inquiry Aide
Immigration Court/Lbt

tj

Form I-295
Rev. 6-1-73

A-5

GPO 881-992

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

File No.: A 10 116 749 - New York

MAY 3 0 1974

In the Matter of:)

CHARALAMBOS PAPPAS) In Deportation Proceedings

-Respondent-)

CHARGE: I & N Act Section 241(a)(9) (8 USC 1251(a)(9)) - Nonimmigrant visitor failed to comply.

APPLICATION: Adjustment of Status under Section 245 (8 USC 1182(h)) - with a waiver of inadmissibility under Section 212(a)(9) (8 USC 1182(a)(9) pursuant to Section 212(h), or Voluntary departure.

In Behalf of Respondent:

Steven Singer, Esq.
Barst & Mukamal
127 John Street
New York, N.Y. 10038

In Behalf of Service:

John Ruggiero, Esq.
Trial Attorney
New York, N.Y.

DECISION OF THE IMMIGRATION JUDGE

The respondent is a 40 year old married male alien. He is a native of Egypt and a citizen of Canada who last arrived in the United States on or about May 20, 1971 at Blaine, Washington. He was admitted as a visitor for pleasure. Subsequent to his admission the respondent was employed and has been employed at a number of places as a cook. The Order to Show Cause speaks of his employment at the Apollo Diner, Queens in New York City but the record reflects additional employment. Deportability on the charge set forth in the order to show cause is conceded and established for the record.

The respondent has applied for adjustment of status under Section 245. Because the respondent has been convicted on two occasions for criminal offenses, he has applied for a waiver of those grounds excludability under Section 212(h) (8 USC 1182). He has also applied for the privilege of voluntary departure. In the event of deportation, he has selected Canada as the place to which he would wish to be sent.

The proceeding against the respondent was instituted on April 18, 1972 and the original hearing was opened on May 10, 1972. Subsequently, the Service instituted proceedings against the respondent's wife and her case was consolidated with that of the respondent for hearing. The respondent's wife who is a native and citizen of Canada could not apply for adjustment of status and has made application for the privilege of voluntary departure only. Her case is somewhat less involved I have concluded that it should be severed from that of the respondent for purposes of the decision. A separate decision in her case is being entered today.

The respondent has been convicted for criminal offenses on two occasions once in Canada and once in New York. On October 29, 1958 he was convicted in Vancouver, British Columbia for doing an indecent act in a rooming house in that city. He was fined $50 for that offense. On March 26, 1971 he was arrested in the Woodhaven Station of the Independent Subway in New York City charged with indecent exposure. The respondent was also arrested on another occasion on an assault charge.

when the respondent filed his original application for adjustment of status on May 10, 1972 before me he also submitted a Form G325'. He was asked to review this form and asked whether it was correct as submitted. It later developed that the form as submitted did not contain accurate information concerning his employment or his residence. Specifically, it indicated that he had been living in Canada from 1954 until May of 1971 and furnished an address in Corona, New York rather than the actual address where he and his wife and children were actually living in Woodburn, New York. These two communities are approximately one hundred miles apart. Moreover, he indicated that he had been employed by the Canadian Pacific Steamship Company as a Seaman from 1962 to January 1972. In fact, the respondent has spent most of that time in the United States unlawfully. The record reflects that he entered the United States as a crewman on September 6, 1955 and was placed under deportation proceedings on October 19, 1955. He was given a hearing on November 2, 1955 and was granted the privilege of voluntary departure. The respondent reentered the United States as a crewman on August 20, 1956 in Tampa, Florida and was placed under deportation proceedings again on September 18, 1956. On September 25, 1956 he was again granted the privilege of voluntary departure. In September of 1965 he again entered the United States as a visitor and remained until March 24, 1970 when he was again placed under deportation proceedings. On March 31, 1970 he was again granted the privilege of voluntary departure on or before September 30, 1970. Respondent reentered the United States at Blaine, Washington

on May 29, 1971 and has remained. He was placed under these proceedings on April 18, 1972.

It further appears that the respondent actually was in the United States during other periods. He was also here in the United States from 1960 until 1963 or 1964. He acknowledges that he knew it was in violation of the immigration law to come here and work. Indeed, he should have in view of the number of times he was placed under proceedings. It is clear that his continual violation of the immigration law was a wilful and knowledgeable one. It is equally clear that the respondent was not a bona fide nonimmigrant on any of his trips to the United States.

After the respondent entered the United States in September of 1965 it came to the attention of the Service that he was working in Florida and prosecuting an application for a visa through the American Consulate at Montreal, Canada. In 1968 the Miami office gave the respondent and his wife permission to depart voluntarily apparently because they were the parents of a United States citizen child. However, they did not avail themselves of the opportunity to obtain visas and elected to remain in the United States until they were located in the New York District and placed under the proceedings in 1970. This resulted in the last order granting voluntary departure in March of 1970. Only a short time after their departure, however, they again reentered and have remained here ever since.

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Dept

Q. Does your mother live with [illegible]

The respondent is the beneficiary of a fourth preference visa petition filed by his mother in his behalf. That petition was filed on May 12, 1970, and it was forwarded to the United States Consulate at Montreal at the request of the respondent. He was, therefore, again free to proceed to Canada and perfect his application at the consulate there. Instead, he chose to apply for adjustment of status in the United States, rather than pursue his application with that of his wife and two children at the consulate. Even if respondent's application for adjustment were to be granted the wife and children would still be required to leave the United States to obtain visas because they are western hemisphere natives.

The respondent's criminal record includes a conviction in New York, New York for public lewdness in violation of Section 245.00, a crime involving moral turpitued. He also has been convicted for a similar offense in Canada, in violation of former Section 158 of the Criminal Code of Canada. He has applied for a waiver of inadmissibility arising out of those convictions under Section 212(h) on the claim of ensuing hardship to his mother and son, both of whom are United States citizens. It is his burden to show the extreme hardship contemplated by the statute.

I find he has failed to establish the degree of hardship required for waiver of inadmissibility at this time. At the most the hardship visited on his son who is a citizen of the United States would be a brief stay outside of the United States pending the processing of visa applications by the alien member of his family.

This should not and would not have resulted into any extraordinary delay had the family elected to process their applications for visas in Canada in 1970 or earlier on the basis of the availbility of a visa to the respondent's spouse. Any hardship to either the mother or son now resulting from a brief sojourn in Canada of the family is entirely of their own doing. It arises from their wilful choice to violate the immigration law, rather than proceed with their pending visa applications in Canada which they filed in 1968. In connection with this application before me the Service has conducted an investigation which will serve as guidance for the District Director in passing on an application for a waiver which may be filed in connection with a visa application. There is no reason to anticipate an extended delay.

I therefore find that the respondent has failed to establish the extreme hardship which is required for the application for a waiver under Section 212(h) at this time in this proceeding. Obviously the circumstances will be different if the respondent is accompanying a spouse and child who are immigrants coming to the United States. At the moment that is not the situation. The spouse and children are not eligible for adjustment in the United States and they are not residents of the United States.

The practicalities of requiring the entire family to make their applications and show their admissibility at one and the same time are apparent. Therefore, in the exercise discretion I deny the application for adjustment of status under Section 245. However,

the respondent's application for voluntary departure as an alternative to adjustment of status will be granted. In view of the fact that the children are attending schools in the United States, it would be appropriate to permit them to finish the school year. I will therefore, authorize voluntary departure on or before the 15th of July to permit the respondent to make arrangements to leave and also to initiate the steps to reactivate the visa applications in Canada.

ORDER: IT IS ORDERED that the applications for adjustment of status under Section 245 and for a waiver of inadmissibility pursuant to Section 212(h) be denied.

IT IS FURTHER ORDERED that in lieu of an order of deportation respondent be granted voluntary departure without expense to the Government on or before July 15, 1974 or any extension beyond such date as may be granted by the District Director, and under such conditions as the District Director shall direct.

IT IS FURTHER ORDERED that if respondent fails to depart when and as required, the privilege of voluntary departure shall be withdrawn without further notice or proceedings and the following order shall thereupon become immediately effective: respondent shall be deported from the United States to Canada on the charge(s) contained in the Order to Show Cause.

FRANCIS J. LYONS
Immigration Judge

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

20 West Broadway
New York, N.Y. 10007

Date: June 3, 1974

Steven Singer, Esq.
Barst & Mukamal
127 John Street
New York, N.Y. 10038

File A- 17 436 532

and

John P. Ruggiero, Esq.
Trial Attorney
New York, N.Y. 10007

MATTER OF
LUELLA PAPPAS

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☐ You are advised that on _____ the Immigration Judge entered an order, which is final, granting the application for adjustment of status to that of a permanent resident under Section _____ of the Immigration and Nationality Act. A Form I-151, Alien Registration Receipt Card will be delivered in due course.

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Very truly yours,
Loretta B. Terrell

Form I-295
Rev. 6-1-73

A-13

GPO 861-992

Q You weren't arrested?

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

File No.: A 17 436 532 - New York

MAY 3 0 1974

In the Matter of:)

LUELLA PAPPAS) In Deportation Proceedings

-Respondent-)

CHARGE: I & N Act Section 241(a)(2) - Nonimmigrant visitor remained longer.

APPLICATION: Voluntary departure.

In Behalf of Respondent:

Steven Singer, Esq.
Barst & Mukamal
127 John Street
New York, N.Y. 10038

In Behalf of Service:

John Ruggiero, Esq.
Trial Attorney
New York, N.Y.

DECISION OF THE IMMIGRATION JUDGE

The respondent is a 42 year old married female alien, a native and citizen of Canada who entered the United States in April 1971 at St. Albans, Vermont as a visitor for pleasure who was authorized to remain in that status for one month. She remained thereafter without authority and is subject to deportation on the charge set forth in the order to show cause as she concedes.

The respondent's case was consolidated with that of her husband, Charlambos Pappas (File No. A 10 116 749) and heard on October 26, 1973. Deportability on the charge set forth in the Order to Show Cause was conceded and established. The respondent selected Canada

Canada as the country to which she would wish to be sent if deported.

The respondent has applied for the privilege of voluntary departure. Her husband has applied for adjustment of status under Section 245 and, alternatively, for voluntary departure. I have today entered an order denying his application for adjustment of status and granted voluntary departure in his case. Because this respondent's case is less complex, I have concluded that a separate decision is appropriate.

The respondent has three children age 22, 13 and 8. The youngest was born in the United States. In 1968 she was processing an application for a visa at Montreal, Canada. A visa should, therefore, be available within a short time if the application is reactivated. Except for violations of the immigration laws on this and prior occasions there are no adverse factors in her case. Voluntary departure will be authorized for a period sufficient to permit the completion of the school year by the respondent's children, who are living with her in the United States.

ORDER: IT IS ORDERED that in lieu of an order of deportation the respondent be granted voluntary departure without expense to the Government on or before July 15, 1974 or any extension beyond that date it must be granted by the District Director and under such condition as the District Director shall direct.

IT IS FURTHER ORDERED that if respondent fails to depart when and as required, the privilege of voluntary departure shall be withdrawn without further notice or proceedings and the following order shall thereupon become immediately effective: respondent shall be deported from the United States to Canada on the charge contained in the Order to Show Cause.

FRANCIS J. LYONS
Immigration Judge

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

REPORT OF INVESTIGATION

TITLE	FILE NUMBER
PAPPAS, Charalambos, aka PAPPAS, Harry	A10 116 749

REPORT MADE AT	DATE	BY
New York City	7/16/73	Morris Altman, INVESTIGATOR

SYNOPSIS

SUBJECT's mother, CHRYSTALLA HARRIS, nee CHRYSTALLA CHARALAMBIDES, United States Citizen, interviewed. She claims separation from SUBJECT imposes a severe emotional hardship.

SUBJECT interviewed and he claimed that expulsion from the United States would cause a financial and emotional hardship on his part; that expulsion would separate him from his United States Citizen mother and brothers residing in the United States and would deprive his United States Citizen born child, THOMAS ANDREW PAPPAS, of an American education.

Neighborhood and employment investigations disclosed no derogatory information concerning SUBJECT.

A check with the Federal Bureau of Investigation, Identification Division, failed to reveal any further information concerning the SUBJECT not previously known.

Exhibit 17
7/16/73

Form G-166 (Rev. 9-1-64)

A-17

GPO 946 054

DETAILS

On March 16, 1973, SUBJECT's mother, CHRYSTALIA HARRIS, nee CHRYSTALIA CHARALAMBIDES, appeared at this office and was interviewed in the Greek language, and advised as follows.

She entered the United States at New York City on October 9, 1956 as a Lawful Permanent Resident, LPR #A10 379 295, and on March 13, 1962 became a naturalized citizen of the United States, using the name of CHRYSTALIA HARRIS, Certificate of Naturalization number 8402085, Petition number 624168.

SUBJECT's mother continued by giving the following information concerning self and SUBJECT: She is very fond of and close to the SUBJECT. He and his children visit her every two weeks and she in turn visits him on the average of once every three weeks. He not only gives her moral support but contributes to her financial support by giving her $30 monthly. If he were compelled to leave the United States, she would not be able to see the SUBJECT or his children except on rare occasions.

The SUBJECT, HARRY PAPPAS, in the presence of his attorney, was interviewed at this office on April 27, 1973. In response to questions, SUBJECT furnished the following pertinent information.

He married LUELLA MAY PAPPAS, nee JOHNSTON, a native and citizen of Canada, on June 5, 1960 in Vancouver, British Columbia, Canada. This has been his first and only marriage and, since December 1971 has been residing with his spouse and children at Maple Lawn Apartments, Route #52, Woodburn, New York.

He has never been a sympathizer or member of the Communist Party. He has no savings or any type of investments. He owns two automobiles, a 1967 Ford Mustang and a 1965 Chevrolet sedan. Since April 16, 1973 he has been employed as a chef at the Concord Hotel, Kiamesha Lake, New York, and earns $240 for a six day work week.

The SUBJECT's spouse, LUELIA MAY PAPPAS, A17 436 532, was placed under docket control at this office on November 27, 1972. SUBJECT has two children born as a result of this marriage: CONSTANTINOS HARRY PAPPAS, born November 18, 1960 in Vancouver, British Columbia, Canada, presently under docket control, A17 436 534; THOMAS ANDREW PAPPAS, a United States Citizen, born December 30, 1965 in Suffern, New York, who is presently attending elementary school in Woodburn, New York.

SUBJECT's spouse has a child born of a previous marriage, STANLEY McDONALD, born October 11, 1952 in Edmonton, Canada, and who is presently attending Spokane Community College, Spokane, Washington. SUBJECT has not legitimized this child.

SUBJECT also has the following United States ties: A brother, GEORGE PAPPAS, United States Citizen, 228 Melropolitan Avenue, Brooklyn, New York, and another brother, WILLIAM PAPPAS, United States Citizen, 96-24 41st Avenue, Queens, New York.

SUBJECT continued as follows: It would be a tremendous financial and emotional hardship if permission were denied him to remain in the United States. His son, THOMAS, is a United States born citizen. He wants him to be educated in the United States and believes that a son has a better future in the United States. If he was forced to leave the United States, it would be difficult for him to find a good-paying job in Canada to support his family. He wants to be in the United States with his United States citizen mother and his two United States citizen brothers. He is attached to his mother and brothers, and expulsion from the United States and separation from his family would cause an undue hardship on his part.

The following persons, who have known the SUBJECT as residing at the below-designated addresses, were interviewed on the following dates:

On May 15, 1973, Mr. NATHAN SCHWABER, United States Citizen, 2320 Avenue U, Brooklyn, New York, made the following statements concerning the SUBJECT: He knew the SUBJECT from September 1968 to September 1970 when he and his family resided at Route No. 42, South Fallsburgh, New York. Mr. SCHWABER stated that he rented this residence to the SUBJECT and had no derogatory information concerning the SUBJECT.

On May 29, 1973, the following persons were interviewed at the SUBJECT's present residence, Maple Lawn Garden Apartments, Route No. 52, Woodburn, New York:

Mr. PETER FINEBERG, United States Citizen, Apt. #3, stated that he has known the SUBJECT since September 1971.

Mrs. LILLIAN LOPEZ, United States Citizen, Apt. #2, stated that she has known the SUBJECT since May 1972.

Mrs. CARRIE KOMITO, United States Citizen, owner of Maple Lawn Garden Apartments, stated she has known the SUBJECT since December 1971.

No adverse information was received from the above interviewed persons concerning the SUBJECT.

Investigation of SUBJECT's past and present employment was conducted by interviewing the below specified persons on dates indicated:

On December 12, 1972, interviewed Mr. PETER CONTARATOS, LPR, owner of the Apollo Diner, 84-05 Queens Boulevard, Queens, New York. Mr. CONTARATOS stated that the SUBJECT was in his employ as a chef from January 1972 to June 1972.

On May 29, 1973, the following employment investigation of the SUBJECT was conducted:

Mr. GERALD L. BRIGGS, United States Citizen, Personnel Manager of the Concord Hotel, Kiamesha Lake, New York, was interviewed. Mr. BRIGGS gave the following information concerning the SUBJECT: He has been in this employment as a cook from April 16, 1973 to the present time and is earning $240 for a six day work week.

Mr. BERNARD SHORE, United States Citizen, owner of the Chateau Restaurant, Route No. 17B, Monticello, New York, was interviewed. Mr. SHORE stated that the SUBJECT was in his employ as a chef from January 1971 to December 30, 1971 and from May 30, 1972 to October 27, 1972.

Mr. ALLAN FLEISCHMAN, United States Citizen, manager of the Davos Ski Lodge, Woodridge, New York, was interviewed. Mr. FLEISCHMAN stated that the SUBJECT was in his employ as a cook from November 15, 1972 to February 1, 1973.

No adverse information concerning the SUBJECT was received from the above interviewed persons at employment locations.

A check with the Federal Bureau of Investigations, Identification Division, revealed no further information concerning SUBJECT not previously known

A check with Source N-1 revealed no further information concerning SUBJECT not previously known.

the United States. So I ask you why isn't the application being made in Canada in the country where he resides?

SIO TO RESPONDENT:

Q Why don't you go back to Canada and make your application there?

A I have my children in school here.

Q Well why did you bring them down her to go to school?

A Can't make enough moneu up there.

Q When did you bring the m down.

A --

SIO: All right, lot's get the visa petition down from Montreal.

SIO TO RESPONDENT:

Q Why did you have it sent to Montreal, when you were living in Vancouver? Y$_o$u were living in Vancouver, is that right?

A Yes.

Q Why didn't you have it sent to Vancouver?

A In the meantime I have my mother in a car accident over here.

Q When was your mother in a car accident?

A March or April, and I come down in May. That's the reason why I come down. I think my mother was here three or four month....

SIO: Wait a minute. Do you have any proof of inspection at the Canadian border?

MR. SINGER: I will develop that.

MR. SINGER TO RESPONDENT:

Q Mr. Pappas, did you enter the United States at Blaine, Washington on May 20, 1971?

A Yes.

SIO: That's not the last entry, is it? Oh, I see, all right, go ahead.

MR. SINGER TO RESPONDENT:

Q Did you enter by plane?

A I entered by bus.

Q By bus, and did you submit yourself to a United States Immigration Officer at that time?

A Yes.

Q Where?

A At Blaine, at the border.

Q What happened? Did you show them anything?

A Showed him my passport.

Q Passport? Just your passport?

A That's all.

Q And what did he say to you?

A He asked me, where are you going? I said to my mother, she's hurt....

Q Did he put anything in your passport?

A --

SIO TO RESPONDENT:

Q You showed him your passport?

A Yes.

Q Why? You don't have a Canadian nationality/certificate or naturalization?

A I do have, sir.

Q You didn't show him that?

A No. sir.

Q Just showed him your passport.

SIO: Go ahead.

ATR. SINGER TO RESPONDENT:

Q Does your mother live with you now?

A While I am in the city, yes.

Q Do you support her?

A In a way, yes

SIO TO RESPONDENT:

Q Where does your mother live?

A 40-68 98th Street, Corona.

Q How long has she lived there?

A Ten years now, maybe more.

Q Who does she live with?

A Pardon?

Q Who else lives there?

A By herself, nobody else.

Q Where is your family?

A They live up-State.

Q Where upstate?

A Woodburne.

Q And you live in Woodburne, too?

A I stay inthe city - my mailing address is... Woodburne...

Q I don't want a mailing address. I want to know where you live? Where did you sleep last night?

A Last night I slept in city.

Q And where did you sleep the night before?

A The house.

Q Where's that?

A Up-state, Woodburne.

Q Put that down on this form as a residence. Now, go over this form, and fill it out correctly.

SIO: Off the record. On the record.

SIO: Recess. Resume.

SIO: Mr. Singer, I have been furnished with a new Form 325-A.

SIO TO RESPONDENT:

Q Mr. Pappas, you have gone over this, I take it, during the recess?

A Yes, sir.

Q This is now accurate, is that right?

A True.

Q And it is substantially different from the one you gave me before. Now, why didn't you furnishm the correct information in the first place?

A I lived in the city and I wasn't asked for details.

Q You weren't asked for details?

A The last years.

SIO: Mr. Levine, I am going to keep the original inthe record. And I will mark it as an Exhibit.

SIO TO RESPONDENT:

Q I asked you if this was complete, specifically, and it shows you told me Yes.

SIO: All right, that will be Exhibit 3.

SIO: When you furnish birth registration for Thomas, I will mark that Exhibit 4.

SIO: Do you have any further question of respondent?

MR. SINGER: Yes, I would like to establish....

SIO: Go ahead. But incidentally, is there an alternate application for voluntary departure?

MR. SINGER: Yes, there is.

SIO : All right, go ahead.

MR. SINGER TO RESPONDENT:

Q Mr. Pappas, you have a wife and three children in the United States, is that correct?

A Yes.

Q And they live up in Suffern, New York, or - in Woodburne?

A Yes.

Q Woodburne, New York, correct?

A That's right.

Q And your children attend school in the United States?

A Yes.

Q Your oldest has finished high school?

A Yes, sir.

Q Is he going to college now?

A Yes, sir.

Q They have been accepted at college?

A Yes, a scholarship.

Q Where in Washington?

A In Washington.

Q Your borthers are both citizens of thd United States?

A Correct.

Q They both live in New York City?

A Correct.

Q Do you contribute to the support of your mother?

A Yes, I do.

SIO TO RESPONDENT: Keep your voice up.

Q You live with your mother five days a week, while you are working in the city?

A That's right.

Q Do you feel it is necessary for somebody to live with your mother?

A Well since the accident. She couldn't get around for four months, but it's a all right now. She can still get around. She does much better with somebody with her.

Q If you went back to Canada could you get a job?

A I could get a job, yes.

Q Would you be able to support your family in the United States?

A I don't think so.

SIO: Just a minute, I'm not clear on the status of the family. They are here illegally.

MR. SINGER: Well, one child is born in the United States.

SIO: Obviously the child born in the United States is a citizen. The others are citizens of Canada and presumably unlawfully in the United States. How long have they been unlawfully in the United States?

BY RESPONDENT: Since June of last year, 71.

SIO TO RESPONDENT:

Q And where were they before that?

A Canada.

Q They were with you when you came back in?

A Yes.

Q There's no reason they can't return to Canada, is there?

A No, there wouldn't be.

MR. SINGER: Nothing further.

SIO: All right, Mr. Levine?

Q You weren't arrested?

A I was asked to appear at the court.

MR . LEVINE TO RESPONDENT:

Q Mr. Pappas, the report that I have before me now sir recites that you were fined fifty dollars or twenty days.

SIO: All right, you get that record too, Counsel. You have thirty days for that the complete record.

SIO TO RESPONDENT:

Q What did you say, sir. It was what?

A My lawyer at the time I asked him I said what' am I standing? / am I found guilty or not guilty, and he says I am charged with....

Q That's right, you were charged with a criminal offense. What was the crime?

A I don't even know what the crime was.

Q You don't know what it was. All right, we'll find out what it was.

MR. LEVINE TO RESPONDENT:

Q Now, those two times, were they the only times you were arrested ,sir?

A --

SIO TO RESPONDENT:

Q Were those the only two times, the once in Canada, and once in New York?

A I think so.

Q You think so? You don't remember?

A I never spent any time in jail, I don't know.

Q I didn't ask you whether you spent any time in jail. I asked you you had ever been arrested or charged with a crime or any offense whatsoever, anyplace, anywhere in the world? Now how many times have you been charged?

A That's all I remember, sir.

Q You don't remember?

A Once I was arrested, we were in a brawl yes.

MR. LEVINE TO RESPONDENT:

Q You were arrested on March 11, 1960...

A I pressed the charges on the guy.

SIO TO RESPONDENT:

Q Nobody asked you whether you pressed charges. The question is were you arrested?

A Yes, sir, I was trying to think. These things go by...

Q You think about it, and come back at one o'clock.

SIO _ Recess .

SIO: The hearing is resumed after the luncheon recess.

SIO: Counsel - well I'll address the respondent.

SIO TO RESPONDENT:

Q Now suppose we find out how many times you have been arrested, charged with any violation of any law anywhere in the world for any reason whatsoever?

A Three times.

Q Three times. And those are the three we have heard about, one in New York, for indecent exposure, one in Canada for what?

A For an indecent act.

Q And the third is assault.

MR. LEVINE: The assault charge.

SIO TO RESPONDENT:

Q Those are the only three?

A That's right. When I was here before I got voluntary departure.

the American Consulate in Montreal and have a set of papers forwarded from Florida to Montreal?

A Yes, sir.

Q So that you also made an application in Montreal?

A Correct.

Q And that was when, in 1968?

A Yes.

Q So that was two prior applications you made before this one.

SIO: What was the basis on which he was making that?

MR. LEVINE: I have the 508, sir, but it doesn't tell me, it was to obtain an immigrant visa, I believe fourth preference.

SIO: That was approved October 8, 1970.

MR. LEVINE: And that probably is the basis---

SIO: No, no, in 68?

MR. LEVINE: Oh, I'm sorry. No, in 68 he made the application for ...

SIO: What did he make in 68? What have you got there? Will you take it out?

BY RESPONDENT: I was trying to think myself.

SIO: I know it doesn't tell us vdry much.

MR. SINGER: Not that he made th application, that he inquired.

SIO: He made the application in Montreal and Montreal - this is a document sent from Montreal to Miami, and that's Miami's reply, apparently. It originates in Montreal. And you don't have the DS 370 in the file?

SIO: Well, I will make this part of the record as EXHIBIT 7. Go ahead.

MR. LEVINE TO RESPONDENT:

Q Mr. Pappas, how many times have you been under deportation proceedings

in the United States?

A Three times.

Q You entered once as a crewman, is that right?

A Yes.

Q And you didn't leave with your ship, right?

A I paid my way out.

Q You didn't leave when you were required, is that correct?

A ---

Q You left November 2, 1965.

A I was here.

Q Sirm you were placed under deportation proceedings because you did not leave when required.

A Then in 65.

Q Probably in 55. The warrant of arrest was served on October 19, 1955, but the decision was entered on November 2, 1955.

SIO: What have you there, Mr. Levine?

MR. LEVINE: I have the decision by Special Inquiry Officer, finding him deportable.

MR. LEVINE TO RESPONDENT:

Q Did you subsequently leave the United States after that deportation hearing?

A Yes, sir.

Q And on August 20, 1956, you came back again as a crewman, didn't you?

A Correct.

Q And you were again placed under deportation proceedings?

A Yes, sir.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

CHARALAMBOS PAPPAS
AND
LUELLA MAY PAPPAS,

Petitioners,

-against-

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

Docket No. 75-4219

AFFIDAVIT OF SERVICE

CITY OF NEW YORK:
ss:
COUNTY OF NEW YORK:

HARRY POLATSEK, being duly sworn, deposes and says:

1. That I am over 18 years of age and that I am not a party to this action.

2. That I reside at 82 Schermerhorn, Brooklyn, New York 11201.

3. That on January 20, 1975, I did serve a copy of the brief and appendix for petitioner in the above captioned matter upon the office of Thomas Cahill, U.S. Attorney for the Southern District of New York, located at 1 St. Andrew's Plaza, New York, New York, in the office of the Civil Clerk, located on the 5th floor at the aforementioned address.

Harry Polatsek
HARRY POLATSEK

Sworn to before me this
20th day of January, 1976.

Stephen Singer
NOTARY PUBLIC

STEPHEN SINGER
Notary Public State of New York
No. 30-9023418 Nassau County
Comm. Expires March 30, 1976